



Wolf Briefing



Taking Advantage of the Annual Gift Tax Exclusion

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There has been much discussion in Washington, D.C. about making the “repeal” of the estate tax permanent. Presently, the estate tax is being gradually eliminated each year and is scheduled to occur fully for individuals dying after 2009. However, due to a sunset provision put in place to comply with budgetary rules, after 2010 the rules go back to the way they were prior to 2001. This means that the estate tax is repealed only for those who die in 2010 unless Congress extends or makes permanent the repeal. This also means that there is quite a bit of uncertainty with regard to these rules and how to plan for them.

With respect to gift taxes, in 2001 the exemption amount was increased to \$1 million for all years after 2001 but the gift tax is not being repealed in 2010 as is the estate tax.

One provision that has remained constant is the ability to make certain gifts during your lifetime that are excluded for both estate and gift tax purposes. Using the 1997 amount of \$10,000 as the base, the annual gift tax exclusion is adjusted for inflation. For 2007, the exclusion is \$12,000.

The exclusion covers gifts an individual makes to each donee each year. Note that the donee does not need to be related to you. Thus, a taxpayer with three nieces can transfer a total of \$36,000 to them every year with no gift tax consequences. If the only gifts made during a year are excluded in this way, there is no requirement to file a gift tax return. If annual gifts exceed \$12,000 per donee, the exclusion covers the



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first \$12,000 and only the excess is taxable.

Even “taxable” gifts may result in no gift tax because of the \$1 million exemption mentioned above.

If the donor of the gift is married, gifts to donees made during a year can be treated as split between the spouses even if the gift is given by only one of them. Thus, if a married couple has three children, the total excludable

gifts to the three children would be \$72,000. If their children are married, the couple could transfer a total of \$144,000 each year to their children and their children's spouses. With annual transfers at these levels, you could significantly reduce your potential estate tax.

For gifts to qualify for the exclusion, they must be gifts of "present interests." That means that the donee's access to the gift cannot be postponed into the future. There is an exception to this rule if the donee is a minor. The terms of the trust or account holding the gift must provide that the income and property may be spent by or on behalf of the minor before he or she reaches age 21, and that whatever is left when they turn 21 becomes theirs outright. If these requirements are met, then the transfer qualifies for the exclusion.

Note that if payments are made on behalf of an individual directly to an educational organization for tuition or to any person providing medical care, such payments do not constitute gifts subject to these rules and may be made without limitation.

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